

MEMORANDUM

November 15, 2005

TO: THE LOS ANGELES COUNTY CLAIMS BOARD

FROM: WARREN R. WELLEN
Principal Deputy County Counsel
Public Works Division

RE: **Ecology Construction, Inc. v. County of Los Angeles**
Los Angeles Superior Court Case No. BC 319711

DATE OF
INCIDENT: August 4, 2001

AUTHORITY
REQUESTED: \$90,000

COUNTY
DEPARTMENT: Department of Parks and Recreation

CLAIMS BOARD ACTION:

☐

Approve

☐

Disapprove

☐

Recommend to Board of
Supervisors for Approval

_____, Chief Administrative Office
ROCKY ARMFIELD

_____, County Counsel
JOHN F. KRATTLI

_____, Auditor-Controller
MARIA M. OMS

on _____, 2005

SUMMARY

This is a recommendation to settle for \$90,000 a lawsuit filed by Ecology Construction, Inc. ("Ecology"), for breach of contract arising from a construction project at Peter F. Schabarum Regional Park performed by Ecology.

LEGAL PRINCIPLES

A public entity is liable for costs incurred by a contractor on a public works construction project due to 1) inaccurate or misleading plans and specifications, and 2) delays caused by the public entity.

SUMMARY OF FACTS

This breach of contract lawsuit arises from a County of Los Angeles Department of Parks and Recreation construction project known as the Peter F. Schabarum Regional Park General Improvement Project ("Project").

The scope of work on the Project included the following:

- Constructing a youth camp, a parking lot, tennis courts, and retaining walls;
- Upgrading three comfort stations to comply with ADA requirements;
- Planting trees and groundcover; and
- Upgrading irrigation and security lighting systems.

The County's consultants, Kriger and Stewart, prepared the plans and specifications for the Project. The specifications contain a table with earthwork quantities that are mistakenly transposed. Specifically, the table mistakenly indicates that substantially more soil needed to be imported to the site, whereas the Project actually requires substantially more soil to be exported from the site.

Ecology submitted the lowest bid for the Project in the amount of \$1,548,890. Ecology allegedly relied on the mistaken table in the specifications and bid the Project assuming that substantially more soil would be imported than exported.

On or about August 4, 2001, the County awarded the Project contract to Ecology. The contract duration was 210 calendar days with an original construction completion date of April 2, 2002.

Soon after work commenced, Ecology discovered the error in the table and on November 7, 2001, submitted a request for information to the County. After consulting with Kriger and Stewart, the County initially denied that there was an error in the plans. After further notice from Ecology, the County acknowledged the error on or about November 21, 2001.

During construction, the County issued 55 change orders to Ecology, increasing the contract amount by a total of \$185,815, and adding 56 work days to the contract. The adjusted contract price paid to Ecology was \$1,734,705. The adjusted contract completion date was July 7, 2002. Ecology contends it completed work on October 18, 2002, but a certificate of completion was not issued until January 6, 2003.

On or about August 6, 2004, Ecology filed a complaint against the County in Los Angeles Superior Court alleging causes of action for breach of contract and seeking damages related to the breach, pre-judgment interest, and attorneys' fees. On or about September 15, 2004, the County filed a cross-complaint against Ecology seeking liquidated damages.

DAMAGES

In April 2005, the County's construction claim consultant met with Ecology's consultant. As a result of that meeting, Ecology reduced its damages claim to \$396,548.

STATUS OF CASE

The proposed settlement was reached during mediation.

In light of the proposed settlement reached between the parties, the Court vacated the trial date previously set for October 31, 2005.

The County has incurred approximately \$34,000 for in-house attorneys fees and expert witness fees as of the present time.

EVALUATION

At trial, the trier of fact is likely to find that the County is responsible for the mistakenly transposed earthwork quantities in the plans. There is no dispute

that the County caused certain delays and changes to the project. Further, Ecology will assert that the removal of Ecology's project manager from the Project at the County's demand was unreasonable and negatively impacted Ecology's performance and productivity for a certain period of time.

Given the considerable risks and costs associated with a jury trial, we recommend that this case be settled for \$90,000. The County will retain its right to pursue debarment or contractor non-responsibility proceedings against Ecology and its owners. The Department of Parks and Recreation concurs with this recommendation.

APPROVED:

A handwritten signature in black ink, appearing to read 'Karen A. Lichtenberg', is written over a horizontal line.

KAREN A. LICHTENBERG

Assistant County Counsel

Public Works Division

KAL:WRW:TH:gm